

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

Did claimant sustain his burden of proving an accidental injury arising out of and in the course of his employment with respondent?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' brief and oral arguments, the Board makes the following findings of fact and conclusions of law:

The ALJ denied claimant's claim because she found that claimant failed to sustain his burden of proving that he met with personal injury by accident arising out of and in the course of his employment on April 25, 1995. The Board affirms the ALJ's decision because the Board likewise finds that the preponderance of the credible evidence in this case does not support that claimant suffered a work-related accident. While the Board is mindful of medical evidence supporting the claim, the Board finds that the medical evidence should be afforded little weight since the medical evidence is based on claimant's unsubstantiated and unreliable account of an alleged work-related accident.

Claimant testified at the regular hearing that he injured his lower back and hip when he fell at work. He stated that he reported the accident and injury to his foreman and that his foreman sent him to respondent's infirmary the following day. Moreover, he testified that he informed the nurses at the infirmary about his work-related accident and injury.

Claimant called multiple factual witnesses to support his position, but each disagreed with claimant in significant respects. At the regular hearing, one of respondent's nurses testified as did claimant's foreman. Another of respondent's nurses testified by deposition. Their testimony together with a review of claimant's employment file failed to support claimant's allegations. All denied that claimant reported a work-related accident or injury on either April 25 or 26, 1995. Instead, claimant's file and the nurses' testimony showed that claimant did not report symptoms until May 5 and did not report a work-related accident and injury until May 9, 1995. In addition, the file contained several written statements, which all contradicted claimant's testimony.

Moreover, claimant testified that his co-worker Ascencion Barrios observed his work-related accident. But even Mr. Barrios' testimony conflicted with claimant's testimony when the co-worker testified that he did not observe the accident. He recalled seeing claimant limping at some point in time, but could not say whether this was before or after May 7, 1995, the date claimant was involved in a non-work related automobile accident.

Where, as here, there is conflicting testimony in the record, credibility is a crucial issue. The ALJ had the opportunity to observe the claimant testify in person. In denying claimant's request for compensation, the ALJ apparently disbelieved claimant's testimony. After reviewing the entire record the Board likewise concludes that claimant has failed to sustain his burden of proving by a preponderance of the credible evidence that he suffered an accidental injury arising out of and in the course of his employment with respondent.

The Board agrees with the ALJ's analysis of the evidence and her findings and conclusions. It is, therefore, not necessary to repeat those findings and conclusions in this Order. The Board adopts those findings and conclusions as its own as if fully set forth herein.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Decision of Administrative Law Judge Pamela J. Fuller dated July 16, 2001, should be and is hereby affirmed.

IT IS SO ORDERED.

Dated this _____ December 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stanley R. Ausemus, Attorney for Claimant
Wendel W. Wurst, Attorney for Respondent
Pamela J. Fuller, Administrative Law Judge
Director, Division of Workers Compensation